And since C. only agreed to enter into a joint obligation, he is discharged also. *Ellismere Brewery Co.* v. *Cooper et al.*, [1896] 1 Q. B. 75.

The case is clearly right, but is interesting as an unusual application of the well settled rule indicated in the opinion, that an obligee cannot hold sureties when the execution is manifestly not in conformity with the conditions specified in the body of the instrument. See Brandt on Suretyship, § 411, for a collection of the authorities.

TORTS — CONTRIBUTORY NEGLIGENCE. — DUTY OF PERSON CROSSING ELECTRIC STREET CAR LINES. — Plaintiff's intestate alighted from defendant's street car, and attempted to cross the other track behind the car, without looking for cars on this track. He was struck by a passing car and killed. The lower court charged the jury that the rule in regard to street railways was the same as that applied to steam railways; if the deceased by looking could have seen the approaching car, his omission to look was, as a matter of law, contributory negligence. *Held*, error. Inasmuch as electric street cars run with less noise than steam cars, are within better control of those running them, and their approach is less apt to attract attention, it is a question for the jury whether an omission to look and listen before crossing the track is negligence or not. *Dobert v. Troy City Ry. Co.*, 36 N. Y. Supp. 105.

The New York Supreme Court does not seem inclined to extend the application of its peculiar doctrine of "negligence as a matter of law" from failure to look and listen at a railway crossing. The inference of negligence as a fact from such conduct is doubtless less strong in the case of street railways than of steam railways, and probably if the case is carried up the Court of Appeals will take the same view of it.

TRUSTS — BREACH — LIABILITY OF TRUSTEE. — A trustee received a bribe of £300 for investing £3,000 of trust funds in certain securities. *Held*, (1) the trustee must account to the *cestui* for the bribe, and (2) must make good any depreciation in the value of the securities below £3,000, the purchase price. *In re Smith*, [1896] 1 Ch. 71.

It is well settled that a trustee will not be allowed to make use of his position as trustee as a source of profit for himself. Where a trustee received a bribe to resign his position and to recommend another as his successor, the trustee was held accountable to the *cestui* for the bribe received. *Sugden* v. *Crosland*, 3 Sm. & Gif. 192. On the second point decided in the principal case there seems to be no direct authority. If a trustee wrongfully invests part of the trust fund in a stock which appreciates and part in a stock which depreciates, in an action against him for breach of the trust, he cannot offset the gain to one fund against the loss to the other, but will be charged with the loss on the one fund undiminished by the gain on the other. *Wiles* v. *Gresham*, 2 Drew, 258. The principal case goes but a step beyond this. The trustee's liability in case there is a depreciation in the value of the trust securities below the purchase price, will not be diminished by the £300 bribe which he has been compelled to pay over into the trust fund.

WILLS — EFFECT OF LEGATEE CAUSING DEATH OF TESTATOR — PROCEDURE. — Plaintiff, claiming land as one of testator's heirs at law, brought an action for partition against the defendant, the devisee under testator's will, alleging will to be void because defendant poisoned testator to realize the benefits of the will. *Held*, the killing of a testator by a devisee for the purpose of realizing under a will does not render the devise void, but merely authorizes equity to deprive the devisee of the property devised. *Ellerson* v. *Westcott*, 42 N. E. Rep. 540 (N. Y.). See NOTES.

REVIEWS.

MERWIN ON EQUITY. — It is a matter of regret that it could possibly be inferred from the review of this book published last month that Mr. Merwin's editors had not given credit to the sources used in the preparation of their note on Privacy. As a matter of fact credit was given, and it was far from the intention of the reviewer to imply the contrary.